IN THE HIGH COURT OF BOMBAY AT GOA
***

APPEAL FROM ORDER NO.61/2000

1. Maria Liberia Trigueiros
   Vaz Serra e Braganza,
   widow of late Mario
   Lowrenco Braganza, adult,
   Housewife, since deceased
   represented by her LRs.,
   Appellants a & b:-

   a. Filipe Andre Trigueiros
      Vaz Serra de Braganza,
      Adult, service,

   b. Joana Lacximi Trigueiros
      Vaz Serra de Braganza,
      Adult, service, all r/o
      Rua de Afonso de Bourbon,
      lote 5, Casa Alagoa, St.
      Joao Estoril 2765, Estoril,
      Portugal and represented
      herein by their duly
      constituted Attorney, Mr.
      Jose Maria Miranda, Adult,
      service, r/o H. No.678,
      Borda, Margao, Goa. ... Appellants.

Versus

1. Mrs. Lucia Eulalia Belo
   Souza Machado e Braganza,
   widow of late Manuel
   Xavier Barganza, adult,
   since deceased represented
   by her LRs. a to f Housewife,
   r/o H.No.E-143, Gaunso vaddo,
   Mapusa:-

   a. Mr. Gregorio Vasco de
      Braganza, s/o late Manuel
      Xavier Braganza, adult,
      service and his wife,

   b. Mrs. Noemia Virga Imaculado
      Menezes e Braganza, house-
      wife, both r/o H.No.
      Imnan Vaddo, Mapusa,

   c. Vincente Ivo Assuncao
      de Braganza, s/o late
      Manuel Xavier de
      Braganza, adult, service
      and his wife

d. Pamela Souza Braganza,
adult, housewife, r/o
H. No. E-143,
Gaunsowaddo, Mapusa,
Goa,

e. and f. deleted vide
Order dated 13.12.01 ...Respondents.

Mr. C. A. Ferreira with Mr. L. M. Gajinkar, advocates for the appellants.

Mr. S. D. Lotlikar, Senior Advocate with Mr. A. D. Bhobe, advocate for respondents no. 1 (c) & (d).

CORAM: P. V. HARDAS, J.

DATE: 14th February, 2002.

ORAL ORDER

This an appeal against the Order dated 28th January, 2000, passed by the Ist Addl. Civil Judge, Senior Division, Mapusa, dismissed the application for temporary injunction, i.e. Civil Miscellaneous Application No.216/98/I/SR in Special Civil Suit No.141/98/I/SR.

2. The plaintiffs/appellants herein had filed Special Civil Suit no.141/98/I/SR in the Court of the Ist Addl. Civil Judge, Senior Division at Mapusa. In the suit an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure came to be filed, praying for injunction. The principal ground for claiming injunction is that the defendant no.4/respondent no.1(c) herein, is developing the suit property and carrying out construction thereon, without the consent of the plaintiffs. The contention of the plaintiffs is that the

suit property is a joint property and the defendants in collusion with each other have fraudulently executed a deed of partition dated 20th April, 1978. In the suit, therefore, it is claimed that the plaintiffs are not bound by the deed of partition as the same was executed without their knowledge and the power of attorney is a fraudulent document.

3. The learned trial Court while dismissing the injunction application has held in para 5 of the impugned Order that unless and until evidence is recorded, it would be hazardous to venture a finding that the power of attorney is a fabricated document. The learned trial Court has also held that the plaintiffs are not in physical possession of the suit property and thirdly, the learned trial Court has held that in the event the plaintiffs succeed in the suit, the plaintiffs can be compensated in terms of money. The learned trial Court found that defendant no.4 had invested a considerable amount of money in the development of the suit property and, therefore, the balance of convenience did not lie in favour of the plaintiffs for an injunction. The learned trial Court, therefore, dismissed the injunction application filed by the plaintiffs.

4. Mr. Carlos Ferreira, learned counsel

appearing for the appellants/original plaintiffs, has urged before me that it is necessary to restrain the defendant no.4 from creating any third party interests as the plaintiffs would be unnecessarily required to add subsequent purchasers. It is not necessary to grant an injunction for the sole purpose as the subsequent purchasers would be covered by the doctrine of lis pendens. Any transfer made during the pendency of the suit would be covered by lis pendens and for this purpose it is not necessary to grant an injunction.

5. After giving my anxious consideration to the submissions advanced by the learned counsel for the appellants and the submissions of Mr. S. D. Lotlikar, learned Senior Advocate for the respondents, I am of the opinion that this Appeal does not merit admission and, therefore the same is summarily dismissed, with no order as to costs.

P. V. HARDAS, J.

mc.